

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. 12-6471 SC
)	
REZA TANHA,)	<u>ORDER REMANDING CASE</u>
)	
Plaintiff,)	
)	
v.)	
)	
MACY'S INC., and DOES 1-20,)	
inclusive,)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION & BACKGROUND

Now before the Court is Plaintiff Reza Tanha's ("Plaintiff") motion to remand the above-captioned action to state court. ECF No. 4 ("Mot."). Macy's West Stores, Inc. ("Macy's West") opposes Plaintiff's motion, claiming that it is the proper defendant in this action, not the captioned Defendant, Macy's Inc. ECF No. 11 ("Opp'n"). The motion is fully briefed, ECF No. 13 ("Reply"), and appropriate for decision without oral argument, Civ. L.R. 7-1(b). As discussed below, the Court GRANTS Plaintiff's motion and REMANDS this action to the Superior Court of California, Marin County, because the Court lacks subject matter jurisdiction over the

1 present dispute.

2 The relevant facts are as follows. On September 7, 2010,
3 Plaintiff was picking up a mattress from the loading dock of one of
4 Defendant's California stores, where he ran into an unmarked glass
5 wall and was injured. See ECF No. 1-1 (Notice of Removal), Ex. A
6 ("Compl."). He sued Macy's Inc. in state court for negligence and
7 premises liability on September 7, 2012, id., apparently after
8 settlement talks broke down, see Mot. at 2-3. Macy's West answered
9 Plaintiff's state complaint, though it was never named as a party
10 to the case. Opp'n at 2. On December 1, 2012, Plaintiff sent
11 Macy's Inc. a statement of damages totaling well over \$75,000, and
12 on December 21, 2012, Macy's West removed the case to federal court
13 on diversity jurisdiction grounds. Notice of Removal, Ex. B
14 (Statement of Damages); Mot. at 2-3. On January 23, 2013,
15 Plaintiff moved to remand the case to state court, arguing that the
16 Court lacks subject matter jurisdiction and that Macy's West's
17 removal was defective on several grounds. Mot. at 1-2.

18
19 **II. LEGAL STANDARD**

20 A motion for remand is the proper procedure for challenging
21 removal. Remand may be ordered either for lack of subject matter
22 jurisdiction or for any defect in removal procedure. See 28 U.S.C.
23 § 1447(c).

24 "[R]emoval statutes are strictly construed against removal."
25 Luther v. Countrywide Home Loans Servicing LP, 533 F.3d 1031, 1034
26 (9th Cir. 2008). "Federal jurisdiction must be rejected if there
27 is any doubt as to the right of removal in the first instance,"
28 such that courts must resolve all doubts as to removability in

1 favor of remand. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
2 1992). The party seeking removal bears the burden of establishing
3 federal jurisdiction. Id. at 566-67.

4 Under 28 U.S.C. § 1446(b), the defendant must file the notice
5 of removal within 30 days after being served with a complaint
6 alleging a basis for removal. If the defendant's removal notice
7 fails to meet the procedural requirements of § 1446(b), the court
8 may remand the action based on the plaintiff's timely motion. See
9 McAnally Enters., Inc. v. McAnally, 107 F. Supp. 2d 1223, 1226
10 (C.D. Cal. 2000). Pursuant to 28 U.S.C. § 1447(c), a motion to
11 remand based on any defect other than subject matter jurisdiction
12 must be made within thirty days after the filing of the notice of
13 removal, but the Court may consider whether it has subject matter
14 jurisdiction over a case at any time.

15
16 **III. DISCUSSION**

17 Since Plaintiff filed his motion to remand thirty-two days
18 after Macy's West's notice of removal, the parties' arguments about
19 procedural defects like time bars are untimely, and the Court need
20 not and does not address them. The dispute is limited to whether
21 the Court has jurisdiction over this matter. See 28 U.S.C. §§
22 1446, 1447.

23 Plaintiff claims that Macy's West is not a proper defendant
24 and therefore cannot remove this action to federal court, because
25 the removal statute limits access to removal jurisdiction to named
26 defendants in the state action. See Mot. at 4-7. Plaintiff also
27 contends that, contrary to its notice of removal, Macy's West's is
28 based in Ohio, not California, and as such the Court lacks

1 diversity jurisdiction. Reply at 3-4.

2 Macy's West responds in relevant part that its standing to
3 remove the action is irrelevant, notwithstanding the fact that it
4 is not named as a defendant in this case, mainly because Plaintiff
5 did not raise the issue of whether Macy's West was a proper
6 defendant at an earlier opportunity. See Opp'n at 1-2. Macy's
7 West goes on to state that "[i]n the event that plaintiff is going
8 to insist that Macy's Inc. be the sole defendant, then defendant
9 will accommodate him. However, [Macy's West] has placed
10 [P]laintiff on notice that he will be maintaining this action
11 against a corporation that does not exist." Id. at 2-3. It is not
12 clear what this argument actually means, and Macy's West offers no
13 explanation -- both entities evidently do exist and have engaged
14 with Plaintiff. Finally, Macy's West states that Macy's West is
15 not a citizen of California but of Ohio, making diversity
16 jurisdiction proper.¹ Id. at 3-4. Macy's West's notice of removal
17 affirms this contention, but the Court need not and does not
18 address diversity in this matter because the core issue is whether
19 the Court has jurisdiction over a case brought before it via a
20 removal action filed by a non-party.

21 Whether Macy's West, as a non-party to this case, has
22 standing to take action on Macy's, Inc.'s behalf is a
23 jurisdictional issue, not a procedural one, since Macy's West's
24 standing in this case is an aspect of subject matter jurisdiction.

25
26 ¹ Macy's West also makes arguments as to whether Plaintiff's
27 reference to prior settlement negotiations are admissible and
28 whether they trigger the thirty-day time bar that would prohibit
Macy's West's filing of a notice for removal, but these arguments
are irrelevant to the overriding concerns in this matter, and the
Court declines to address them.

1 See Fleck and Assocs., Inc. v. Phoenix, City of, an Arizona Mun.
2 Corp., 471 F.3d 1100, 1107 n.4 (9th Cir. 2006) ("Standing is an
3 aspect of subject matter jurisdiction.").

4 Defendants are the only parties who are statutorily permitted
5 to remove cases from state to federal courts. 28 U.S.C. § 1441(a)
6 ("[A]ny civil action brought in a State court of which the district
7 courts of the United States have original jurisdiction, may be
8 removed by the defendant or the defendants."); see also Anaya v.
9 QuickTrim, LLC, No. CV 12-1967-CAS(DTBx), 2012 WL 6590825, at *3
10 (C.D. Cal. Dec. 17, 2012) ("It is axiomatic that only a defendant
11 may remove an action from state to federal court."); Juliano v.
12 Citigroup, N.A., 626 F. Supp. 2d 317, 319 (E.D.N.Y. 2009) ("In
13 short, a non-party lacks standing to invoke a district court's
14 removal jurisdiction under 28 U.S.C. §§ 1441 and 1446."). The
15 removal statute makes no allowances for what Macy's West has tried
16 to do, and "[w]here a statute . . . names the parties granted [the]
17 right to invoke its provisions, . . . such parties only may act."
18 Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530
19 U.S. 1, 6-7, (2000) (internal citations and quotations omitted).

20 The parties have done nothing to add Macy's West as a
21 defendant in this case. For example, Plaintiff has not amended his
22 complaint, and Macy's West has not formally moved to intervene.
23 Macy's West's arguments under these circumstances strain both
24 credulity and Rule 11. They offer no real explanation of Macy's
25 West's behavior or of its relationship to Macy's Inc. Moreover,
26 Macy's West cites absolutely no law or facts supporting its
27 contention that it is allowed to take over a case in lieu of a
28 named defendant and then to remove said case to federal court.

1 Macy's West simply decided, on its own initiative and without much
2 explanation, that it is the proper defendant in this case, and that
3 "economy and efficiency" merit its taking over the action for
4 Macy's Inc. See Opp'n at 2. This is baseless. Macy's West is not
5 a party to this action and has no standing to remove Plaintiff's
6 case under the removal statutes. As a result, the Court lacks
7 subject matter jurisdiction over this dispute. Fleck, 471 F.3d at
8 1107. The case must be remanded.

9
10 **IV. CONCLUSION**

11 Keeping in mind the Ninth Circuit's instructions that removal
12 statutes are to be strictly construed against removal, and that the
13 Court must resolve all doubts as to removability in favor of
14 remand, Luther, 533 F.3d at 1034; Gaus, 980 F.2d at 566, Plaintiff
15 Reza Tanha's motion to remand is GRANTED, and this case is REMANDED
16 to the Superior Court of California, Marin County. The Court
17 declines to award any fees or costs in association with this
18 remand. The parties are advised to decide who the proper defendant
19 in this matter is.

20
21 IT IS SO ORDERED.

22
23 Dated: April 3, 2013

24 
UNITED STATES DISTRICT JUDGE